No. 16-1140

In the
Supreme Court of the United States

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES, D/B/A NIFLA, ET AL.,
Petitioners,

v.

XAVIER BECERRA, ATTORNEY GENERAL, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* C12 GROUP, CEO FORUM, INC., CHRISTIAN EMPLOYERS ALLIANCE, MARKETPLACE LEADERS IN SUPPORT OF PETITIONERS

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INTERESTS OF AMICI CURIAE[1]

The four amici curiae joining in this brief are all organizations advancing the biblical principle that Christians must conduct themselves and their businesses in ways that honor and glorify Jesus. Like the Petitioners, NIFLA, these organizations and their members believe that their Christian faith is not limited to traditional, ceremonial rites but includes all of one's life. They do not compartmentalize their life into "secular" and "religious" endeavors. Rather, they see their Christian faith as all-encompassing. Their businesses or vocations are no exception to the biblical command that they are to do everything "as for the Lord." Colossians 3:23 (ESV).

The C12 Group ("C12") is the largest network of Christian CEOs, business owners, and executives in the United States. At its roundtables, business leaders from multiple industries convene monthly to incorporate best practices through the foundation of biblical principles by sharing ideas, holding each other accountable, and encouraging one another to uphold the core values of a Christian business leader. In so doing, C12 groups seek to build great businesses for a greater purpose. Its members include more than 2,000 CEOs, business owners and executives representing nearly 1,500 businesses, many of which are closely-held. They span all industry sectors and

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[1] In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, nor did any person or entity, other than amici and their counsel, make a monetary contribution to the preparation or submission of this brief. The parties consented to this filing. Their letters of consent are on file with the Clerk as required by Rule 37.2(a).

represent businesses with as few as five and as many as over 15,000 employees from markets across 37 states. Collectively, these individuals represent hundreds of thousands of US employees, billions of dollars of US revenues, and tremendous supply chain networks. These entrepreneurs share deeply held religious beliefs and view their business and vocation as undeniable expressions of their faith. Many of these businesses give exponentially greater sums of profits to aid in community relief efforts annually, provide exceptional care and services to their employee families, and embrace a faith-based duty to bring goodness and transformation to the communities within which they operate.

The CEO Forum, Inc., supports Christian CEOs and senior executives of major corporations by equipping them to be Christ-following leaders who develop their businesses and employees. Its mission is to develop spiritual statesmen among senior executives of major corporations and, through them, advance the Kingdom of God and improve the business and social cultures of America.

The Christian Employers Alliance ("CEA") is a business trade association advocating on behalf of its members who desire to operate their businesses in accordance with their faith. Its mission is to unite and equip Christian employers with guidance, unified legal strategies, and practical resources for the well-being of employees, organizations, and communities for God's glory. CEA was formed by Christian leaders from many sectors, including business owners, pastors, and non-profit leaders, who decided to unite their organizations, including businesses, schools, colleges, nursing homes, hospitals, churches, and non-

profit ministries, to protect their right to run their organizations in a manner consistent with their Christian beliefs and deeply held convictions and to create a Christ-centered culture in the workplace.

Marketplace Leaders serves to equip Christians who work in business to see the transformation of the workplace, city, and the nation. The organization serves thousands by teaching on ways to live out the Christian faith in the workplace. Students are given the tools and training to engage in the work of the ministry in a vast array of fields and industries often considered secular. With a religious conviction that work is ministry, Marketplace Leaders seeks to break down the wall of secular and sacred. The ministry helps business people see their work as their calling and ministry.

The amici curiae's members are diverse and some may not hold a religious objection to abortion in all circumstances. The amici are united, however, on Petitioners having the right to operate consistent with their sincere religious convictions about life, without the heavy hand of the government compelling a compromising message. The amici's voice will assist the Court in the evaluation of the free speech implications raised by this case for people of faith working in the business world writ large.

SUMMARY OF ARGUMENT

Many people of faith understand that worship is the *raison dêtre* of all work. For these religious believers, the activity of work is not merely a means of providing income or putting food on the plate; rather, it is a means of living out faith. Business thus takes place as fundamentally religious activity

regardless of whether society views the activity as secular. According to this view, it is not just the clergy that engage in religious work; all Christians working in the world have the opportunity to live out faith.

Amici curiae represent thousands of men and women who view their businesses and work as something more than just an honest way to make a living. Workers of religious faith thus see work as divine callings in which they are to use their God-given skills to accomplish God-ordained purposes. This view of work and vocation as a religious calling has been consistently espoused as a precept of religion for many faiths throughout history.

Amici curiae also represent Christian businesses operating in industries and fields far removed from the crisis pregnancy centers operated by Petitioners. And while the California Reproductive FACT Act would not directly apply to any amici, the businesses know they may be next to feel the weight of government compelled speech on issues of religious conviction. These businesses and the religious executives who are seeking to live out their faith in life value the freedom from being targeted by the government for holding an unpopular or minority viewpoint.

In addition, nearly all of the businesses represented by amici curiae are traditional for-profit operations. If Petitioners can be compelled to speak a government message directly at odds with their religious convictions, then all businesses operated consistent with religious convictions are at risk. Without the bulwark of Free Speech, the government, and not individual businesses, will be the ultimate

arbiter of orthodox business practices and the gatekeeper for who work in any given field.

The First Amendment's guarantee of Free Speech has long protected against being forced to express a message that violates ones' conscience. As this Court has repeatedly held, however, nobody should be forced to choose between being in the marketplace or following their religious convictions.

The Christian businesses and leaders of amici curiae highlight the many thousands of Americans working in fields outside pregnancy centers who may nevertheless be forced some day to abandon their religiously motivated business activity on pain of government prosecution and penalty.

ARGUMENT

I. As an Outworking of Faith, Many Christians Conduct Business According to Sincerely Held Religious Beliefs.

Work can be imbued with religious conviction irrespective of the industry or end product. In fact, the most prominent religions in America have long taught that their adherents' whole lives—especially their work—should reflect and bear witness to the values and truth claims of their religion. Their work is a matter of faithful living.

In Christianity, believers are told to conduct themselves and work in a manner fully pleasing to God. *See* Colossians 1:9. Indeed, "work has dignity because it is something that God does and because we do it in God's place, as his representatives ... all *kinds* of work have dignity." Timothy Keller, Every Good

Endeavor: Connecting Your Work to God's Work 36 (2014). Theologically, work was part of creation before the fall. Genesis 2:15 ("The Lord God took the man and put him in the garden of Eden to work it and keep it.").

The call to work writ large extends to the New Testament where believers are told how work is a calling from God. 1 Corinthians 7:17: "Only let each person lead the life that the Lord has assigned to him, and to which God has called him." Likewise, Jesus taught that one day God will ask everyone to give an account for what they did with the business and resources with which they were entrusted. Luke 12:13–21.

As evidenced by the broad memberships and missions of the amici curiae, one need not be preaching or performing sacraments to be engaged in faithful work. Many in business are motivated by religious beliefs and values, even if the service or product itself is not classified as religious. Consider the case of an Amish furniture maker. The work itself is an act of faithful adherence to the higher truth claims of his religion, with even the choice of tools (or lack thereof) being a matter of religious adherence The bedroom set offered for sale serves the same purpose as one from any other company. Yet the religious convictions and the calling of the Amish furniture maker are no less sincere just because the workplace was in manufacturing. Religion can be found in the workplace nearly anywhere.

Amici curiae represent members and religious workers in many spheres, including finance,

education, the arts, medicine, science, architecture, and technology. As a theological matter, these spheres are to be engaged a manner that honors God and acknowledges the created order.

Both Catholic and Protestant teaching speak of work as vocation. A vocational calling for a Christian means that someone is called to work in a manner consistent with God's will. Accordingly, the Catechism of the Catholic Church instructs that "[b]y reason of their special vocation it belongs to the laity to seek the kingdom of God by engaging in temporal affairs and directing them according to God's will." Catechism of the Catholic Church, ¶ 898 (1997). Likewise, the Catholic Church teaches that Christians are:

> ... as citizens of two cities, to strive to discharge their earthly duties conscientiously and in response to the Gospel spirit. ... This split between the faith which many profess and their daily lives deserves to be counted among the more serious errors of our age....
>
> Therefore, let there be no false opposition between professional and social activities on the one part, and religious life on the other. The Christian who neglects his temporal duties, neglects his duties toward his neighbor and even God, and jeopardizes his eternal salvation.

Pope Paul VI, *Gaudium et Spes*, ¶ 43 (Dec. 7, 1965), *available at* https://goo.gl/7cRZv4.

Protestants also have a history of teaching Christians to live out faith in work. For example, John Calvin's seminal Institutes of the Christian Religion state:

> [T]he Lord enjoins every one of us, in all the actions of life, to have respect to our own calling.... Every man's mode of life, therefore, is a kind of station assigned him by the Lord, that he may not be always driven about at random.... [I]t is enough to know that in everything the call of the Lord is the foundation and beginning of right action. He who does not act with reference to it will never, in the discharge of duty, keep the right path.

John Calvin, Institutes of the Christian Religion, Book 3, Chapter 10, Part 6, 2034–2035 (Beveridge trans., Edinburgh, Calvin Translation Society 1845) (1537), *available at* https://goo.gl/jHfTrj. The divide between secular work and sacred work is therefore foreign to most historic teaching of Christianity. Thus, Christianity "calls for transforming our understanding of work from a troublesome toil to a God-given vocation ... work is a thread running from creation straight to the cross." Jeff Myers, Understanding the Faith 229 (2016). As a matter of religious conviction, believers are to integrate faith with all of life, not compartmentalize between church and work.

It is not just the individual at work who lives out faith; businesses also seek to act consistent with the religious convictions of the leaders of the company.

"Business *in itself*—not just the ways business can contribute to the work of the church" glorifies God. Wayne Grudem, Business for the Glory of God: The Bible's Teaching on the Moral Goodness of Business 12 (2003).

The freedom to operate in business according to religious beliefs has been under attack. Recently the attacks have come against businesses that prominently feature creative expression, or which communicate a message for a client as the primary service. In this case California has passed a law targeting and burdening a limited set of religiously operated non-profit businesses in the pregnancy counseling sphere. The Petitioners are burdened with government regulations that require the businesses to express a message that is diametrically opposed to the primary message and viewpoint of the centers. This is a highly burdensome form of compelled government speech.

Like Petitioners, the faith of the amici curiae and its members may prohibit them from conveying every possible message the government may require. The First Amendment secures their right to refrain from giving voice to a message considered morally objectionable. Furthermore, businesses operated consistent with religious precepts should not be targeted or singled out for their religious convictions, as has happed to Petitioners.

As a general matter, businesses working in fields beyond the crisis pregnancy centers may be subject to laws which compel conformance with a disfavored message or bowing to standards which are contrary to

well-established religious values. Potential laws that would burden other Christians in the business world:

- Laws requiring businesses to communicate about religiously objectionable health services, such as abortion or assisted suicide.
- Laws requiring workers to use certain gender pronouns, even when using pronouns in conflict with biological sex would be religiously objectionable.
- Laws requiring affirmation of marriage forms different than religiously defined marriage.
- Laws compelling employers to adopt employment practices that violate religious convictions of the company.
- Laws prohibiting speech regardless of the sincerity of religious conviction compelling the speech in question.

Religious citizens of all stripes value the freedom of religion and concomitant freedom of speech that is sufficiently robust to protect living out faith in work, including the public and commercial spheres. Government compulsion, including compelled speech, threaten these constitutional protections. And with continuing proliferation of business regulations on business, the risks increase that these freedoms will be chilled and suppressed.

II. Free Speech Protects Petitioners Against Compelled Speech Espousing the Government's Antithetical Views.

The First Amendment's cherished rights to the freedom of speech sits at the core of the American

system of government. The California Reproductive FACT Act imperils Free Speech rights in this case. Amici recognize the threat to these Constitutional rights will chill other Christians beyond the parties in this case from engaging in businesses subject to government regulation. Often, the Free Speech Clause protects politically disfavored speakers, as in this case, including cases where the speech is religiously motivated. A failure to correct the court's opinion below will put a dint in the Free Speech protections at the core of individual liberty.

A. The Free Speech Clause protects against government efforts to compel someone to express a deeply objectionable message.

The First Amendment protects Petitioner from being compelled to tell the world something that is directly opposed to the core convictions of the Crisis Pregnancy Centers. "The right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.'" *Wooley v. Maynard*, 430 U.S. 705, 717 (1977) (quoting *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)); *see also Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2253 (2015) ("[T]he First Amendment stringently limits a State's authority to compel a private party to express a view with which the private party disagrees.").

In *Wooley*, the Court examined New Hampshire's law compelling citizens to express the state motto, "Live Free or Die" on license plates. The Court held that requiring this expression made the citizens "an instrument for fostering public adherence to an

ideological point of view [they] find[] unacceptable," and this violated the First Amendment. 430 U.S. at 715. This was so because "[t]he First Amendment protects the right of individuals to hold a point of view different from the majority and to refuse to foster ... an idea they find morally objectionable." *Id.*

This Court has consistently shielded private citizens from governmental efforts to compel them to speak against their will. *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (government may not compel a newspaper to print an unwanted editorial); *see also Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 566 (1995) (finding that a parade was protected under the First Amendment and that the public accommodations law could not compel the parade organizers to accept a group expressing an objectionable message).

B. Compelled speech diminishes the value of the speech and harms both the speaker and hearer.

This case is *West Virginia Board of Education v. Barnett* for the twenty-first century. Just as then, those in control of the levers of power have deemed some high value as justification to coerce unity in society. The question is not the end to be achieved, but "whether under our Constitution compulsion as here employed is a permissible means for its achievement." *Barnette*, 319 U.S. at 640. For better or worse, government control is often used to try and win an ideological battle. That battle here involves the ever-contentious issue of abortion. But it may well be any other ideological battle in the future. Those in the

majority will be wont to use the coercive power of government to try and tip the scales in favor of one side of the argument.

> Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men.

Barnette, 319 U.S. at 640. Persuasion by government coercion, however, falls short of the American Constitutional ideal. Just as in *Wooley*, where the government forced expression of an objectionable message on license plates, in the circumstances of this case the government seeks to compel speech that is objectionable to the speaker.

In the end, attempts to achieve unity by compulsion will never succeed. The faux unity of a compelled opinion comes from the cheapened nature of agreement at the force of the majority. As the Court in Barnett recognized,

> Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

Id. at 641. The compulsion of an objectional message diminishes the dignity of the speaker. As even a

schoolboy knows, forced speech, such as an apology, is both insincere and hurtful to the speaker. This Court should protect the Free Speech rights of those who are the target of an ideological dispute where one side attempts to use government coercion of speech against the dissenting viewpoint.

CONCLUSION

For the foregoing reasons, this Court should reverse and remand the opinion of the Ninth Circuit Court of Appeals.

Respectfully submitted,

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